IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 26TH FEBRUARY 2007 / 7TH PHALGUNA 1928

WP(C).No. 28778 of 2006(A)

PETITIONER:

GEEVER VARGHESE,
(EPC NO.1181, (AWAITING POSTING),
FORMERLY OF HEADQUARTERS COMPANY,
KERALA ARMED POLICE II BATTALION, MUTTIKULANGARA),
KOLLANUR HOUSE, KARIMPUZHA P.O.,
PALAKKAD DISTRICT.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SMT.N.SANTHA
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM.

2. DIRECTOR GENERAL OF POLICE,
POLICE HEADQUARTERS, THIRUVANANTHAPURAM.

3. COMMANDANT, KERALA ARMED POLICE,
II BATTALION,
MUTTIKULANGARA, PALAKKAD DISTRICT.

BY GOVERNMENT PLEADER SHRI. BIJOY CHANDRAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K. DENESAN, J.

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W.P.(C) No. 28778 OF 2006 A
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Dated this the 26th February, 2007

J U D G M E N T

The petitioner is working as Electrician Police Constable in the Kerala Armed Police II Battalion. Disciplinary proceedings were initiated against him which culminated in the imposition of the penalty of removal from service. He invoked the statutory remedy against the order of removal. Finally it was found that the order removing him from service was liable to be set aside. Consequential orders directing his reinstatement was passed vide Ext. P2 dated 16-1-2006. The above order was served on the petitioner on 4-3-2006. He reported for duty on 6-3-2006. But, he was not admitted to duty. He had to compulsorily wait to join duty till 21-11-2006. Thereafter he is discharging his duties.

2. The petitioner approached this Court before orders were passed admitting him to duty. During the pendency of this writ petition he was admitted to duty with effect from 21-11-2006. Hence, the only question for consideration is whether the petitioner is entitled

to claim pay and allowances from 6-3-2006 to 21-11-2006 as though he was actually in service.

3. The 3rd respondent has filed counter affidavit. It is admitted position that the petitioner reported for duty on 6-3-2006. But, he could not be admitted to duty. Paragraph 3 of the counter affidavit reads as follows:

> "It is most humbly submitted that since there was no post of El.PC in KAP Battalion on the day 6-3-06 ie., when the petitioner reported for duty in KAP 2 BN, this office could not admit him for duty. Since this respondent is not competent to create a post, the matter was taken up with Director General of Police, Kerala and DGP, Kerala vide letter No. L3-22340/06 dated 9-5-06 took up the matter before the Government to create one supernumerary post of El. PC in order to accommodate the Ele.PC with effect from 6-3-06."

4. The petitioner cannot be found fault with for the inability of the respondents in not permitting him to join duty but keeping him idle from 6-3-2006 to 21-11-2006. It is evidently a case of 'compulsory waiting' for joining duty. Hence, the petitioner shall be paid pay and allowances for the period from 6-3-2006 to 21-11-2006 as though he was very much on duty. It is so declared. The amount due to the petitioner shall

be worked out and paid to him within six weeks from the date of receipt of a copy of the judgment.

5. It will be open to the Government to make necessary enquiries into the cause for keeping the petitioner compulsorily waiting from 6-3-2006 to 21-11-2006 on the ground that the post was not available. If it is found that the reason for not permitting the petitioner to duty happened on account of lapses on the part of any other officer, it is open to the Government to fix liability on that officer, so found responsible. But the same shall be done only after due notice to the officer concerned and after affording him an effective opportunity of being heard.

The writ petition is disposed of with the above directions.

K.K. DENESAN
JUDGE

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